



IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

2:55 pm, Aug 14, 2024

JOAN KANE, CLERK
U.S. DIST. COURT, WESTERN DIST. OKLA
By: DB, Deputy Clerk

Douglas Mastriano,

Plaintiff,

v.

James Gregory, III, *et al.*,

Defendants.

Civil Case no. 5:24-cv-00567-F

Assigned to
the Hon. Stephen P. Friot

Reply to Response to Motions to Intervene and Unseal (ECF No. 21)

Pro se movant Volokh submits this “reply to new matter raised in the response,” LCvR7.1(h); the reply has been limited to avoid “reargu[ing] the points and authorities included in the opening brief,” *id.*

1. Plaintiff suggests that Volokh lacks Article III standing to seek the unsealing of Exhibit 4, because “UNB published Exhibit 4 online” (Resp. at 3, ECF No. 21-1) and the text of Exhibit 4 is therefore “already available to [Volokh] on the Internet” (*id.* at 2). But without seeing Exhibit 4, Volokh cannot be sure which particular UNB statement—or part of or version of a statement—corresponds to that Exhibit. Volokh, as a member of the public and the press who wants to write about this case, is entitled to know precisely which publication forms the basis for this lawsuit, not just to speculate about that.

2. Plaintiff argues that Volokh is trying “to misuse Oklahoma statutes protecting fair reporting to make an end run around all defamation claims and

cases” (Resp. at 4), and seems to suggest that it is improper for the public and the press to access the alleged defamatory statements in a defamation case in order to report on it (Resp. at 4, 13). But the premise of the fair report privilege, like of the right of access to court records, is that people must be free to write about matters pending before their government, including the courts:

The [fair report privilege] recognizes that (1) the public has a right to know of official government actions that affect the public interest, (2) the only practical way many citizens can learn of these actions is through a report by the news media, and (3) the only way news outlets would be willing to make such a report is if they are free from liability, provided that their report was fair and accurate.

Yohe v. Nugent, 321 F.3d 35, 43 (1st Cir. 2003) (citation omitted). That necessarily means that, in reporting on a defamation case—a case pending before a court, in which the plaintiff is seeking official government action—people must be free to state what precisely the lawsuit is about. And this extends to the parties’ complaints, and not just to the court’s own actions. *See McGhee v. Newspaper Holdings, Inc.*, 2005 OK CIV APP 41, ¶¶ 3, 10, 115 P.3d 896 (applying the fair report privilege to report of allegations in a civil complaint); Okla. Stat. tit. 12 § 1443.1 (2023) (applying the privilege to reports of “anything said in the course” of “any . . . judicial . . . proceeding”).

3. Volokh is filing his motion *pro se*, on his own behalf and not “on behalf of the State of California-funded Stanford University” (Resp. at 2) or “Reason Magazine” (*id.*). He is not “seek[ing]” “to supply his benefactors with an

expected written product for financial return” (*id.* at 1) or to “advance his stated entities’ economic interests” (*id.* at 2). And though his blog is hosted at the Reason Magazine site, he is not a Reason employee, and the blog is editorially independent of Reason. Decl. ¶ 1.

He has filed this motion entirely on his own initiative, without direction from any other organization, and without any payment for the writing or filing of this motion. His plans to write about the case likewise stem entirely from his own decision, without direction from any other organization, and without any payment for such writings. (His modest income from Reason stems from a share of the advertising revenue attributable to visits to the blog, not from any payment based on Reason’s interest in the contents of any particular posts.) Decl. ¶ 2.

Respectfully submitted,

s/ Eugene Volokh

Eugene Volokh

Pro se

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August 13, 2024

Appendix: Declaration of Eugene Volokh

I declare under penalty of perjury:

1. I am filing this motion *pro se*, on my own behalf and not on behalf of Stanford or Reason or anyone else. I am not using it to seek to supply anyone with an expected written product for financial return, or to advance any other entities' economic interests. Though my blog is hosted at the Reason Magazine site, I am not a Reason employee, and the blog is editorially independent of Reason.

2. I have filed this motion entirely on my own initiative, and without direction from or coordination with any other organization, and without any payment for the writing or filing of this motion. My plans to write about the case likewise stem entirely from my own decision, without direction from any other organization, and without any payment for such writings. My modest income from Reason stems from a share of the advertising revenue attributable to visits to the blog, not from any payment based on Reason's interest in the contents of any particular posts.

s/ Eugene Volokh

August 13, 2024

Certificate of Service

I certify under that a copy of the foregoing was sent by U.S. Mail today, August 13, 2024, to counsel for Plaintiff:

Daniel L. Cox
The Cox Law Center, LLC
P.O. Box 545
Emmitsburg, MD 21727

and to the following Defendants:

Roland Kuhn
1200 Montreal Road
Ottawa, Ontario K1A 0R6

National Research Council of Canada
1200 Montreal Road, Building M-58
Ottawa, Ontario K1A 0R6

It was also sent today by e-mail, with consent, to

Don W. Danz, dond@mcateeandwoods.com
William C. Swallow, bill.swallow@clydeco.us
Michael H. Passman, michael.passman@clydeco.us
Emily M. Vanderlaan, emily.vanderlaan@clydeco.us
Counsel for UNB Defendants

Robert Nelon, bnelon@hallestill.com
Counsel for Defendant Gregory

I did not serve the following defendants listed on the docket, because they are Doe defendants and their addresses appear to be institutional addresses, so mail addressed to them would not reach anyone:

Jane Doe
1200 Montreal Road, Building M-58
Ottawa, Ontario K1A 0R6

Jane Doe
Sir Howard Douglas Hall
P.O. Box 4400
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Sir Howard Douglas Hall
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Fredericton, New Brunswick
Canada E3B 5A3

s/ Eugene Volokh